United States Government
National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL

Advice Memorandum

DATE: June 29, 2005

TO : Curtis Wells, Regional Director
Region 16

FROM : Barry J. Kearney, Associate General Counsel
Division of Advice

SUBJECT: IBT, Local 657
Case 16-CB-6858 536-2545-0000
536-2545-0600
536-2545-2900

The Region submitted this case for advice as to whether the Union violated Section 8(b)(1)(A) in connection with the operation of its hiring hall by: (1) failing to adhere to its established referral rules and its Area Standard Agreement by allowing an Employer to contact and hire employees directly and by providing names of out-of-work employees to an Employer, allowing the Employer in both instances to hire employees without regard to their placement on the out-of-work list; and (2) breaching its duty of fair representation by failing to investigate the Charging Party's complaints regarding the Employers' refusal to hire him.

We conclude that the Union violated Section 8(b)(1)(A) by failing to adhere to its established referral rules and Standard Area Agreement without demonstrating it was necessary to its representative function,[1] and by breaching its duty of fair representation by failing to investigate the Charging Party's complaints regarding the Employers' alleged refusal to hire him based on Section 7 activity known to the Union.

FACTS

The Charging Party has been a member of Teamsters Local 657 (Union) since 1975. From 1982 to the end of 1994, the Charging Party served as one of the Union's business agents. From 1991 to 1994, he also held the elective office of secretary-treasurer. In 1994, the Charging Party was defeated by a member of another faction in the Union who took over as secretary-treasurer and

[1] We agree with the Region that the Union's conduct also violates Section 8(b)(2), although the charge alleges a violation of only Section 8(b)(1)(A). The Region may seek an amendment to the charge to include a Section 8(b)(2) allegation.

business agent. That member currently is Union President (Union President) and has served in such capacity during all times relevant to this charge. Since his defeat, the Charging Party has not held any Union office.

The Union maintains an exclusive hiring hall to provide drivers to movie production companies (Employers) filming in the central Texas area.[2] The Union maintains two separate lists of members for referral, the movie craft list and the general call list. The movie craft list, or the "A-List", is comprised of members who have had previous experience working for motion picture producers. In 1995, the Union decided to limit membership to its movie craft list to those who had been craft members prior to January 1, 1995. The Charging Party was placed on the the A-list in early 1995 by the then-Union president despite the fact that he did not qualify because of the January 1, 1995 exclusionary rule. The former Union president made the Charging Party the only exception to the 1995 exclusionary rule in an effort to "heal the wounds of the [1994] election." Although the former Union president closed the A-List in early 1995, the action was not embodied in formal Rule C of the Union's referral rules until 1997, which states:

> C. Craft members who are in movie, pipeline and convention prior to January 1, 1995 will be considered the A-List for those crafts. The A-List members will be referred first. If the A-List is exhausted, extra members will be referred from the [general] call list.

Thus, pursuant to Rule C, employees on the A-list are referred first on a rotational basis before referrals are made from the general call list.

In connection with the operation of its hiring hall, the Union enters into contracts with Employers when a production begins (Standard Area Agreement). The Standard Area Agreement includes Article IV, which governs the employment of drivers from the Union, and provides in relevant part:

> (b) The Producer agrees to request referrals for all drivers required for work covered by the

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[2] In an earlier case involving identical parties, the Board affirmed the ALJ's finding that the Union operates an exclusive hiring hall. See IBT, Local 657 (Texia Productions), 342 NLRB No. 59, slip op. at 7 (2004).

> Agreement from the Union. This provision is subject to the following conditions: (i) Chauffeurs and Trucker Drivers will be referred to the Producer from the Union on a non-discriminatory and lawful basis, and such referrals will in no way be affected by Union membership or any aspect thereof. (ii) The Producer retains the right to reject any applicant referred from the Union.

When a production begins, the Employer retains a transportation coordinator who serves as the liaison with the Union. A transportation coordinator is responsible for the transportation department of a production and is usually the person who contacts the hiring hall to obtain drivers and generally makes hiring decisions. They are usually also members of the Union. The Region has determined that when transportation coordinators are retained by an Employer for a production, they are agents of the Employer.

Since his placement on the A-List in 1995, the Charging Party has been referred to and hired by various Employers. However, starting in October 2001, he began to object publicly to the amount of power the Employers and transportation coordinators were exercising in selecting the referrals, and complained that the Union was allowing the Employers to violate the hiring hall's rotational rule. On December 8, 2002, at a monthly general meeting, the Charging Party told the Union President that according to other Union members, the Employers were using drivers that were not on the A-list or, in some instances, not even in the Union. The Union President said he was unaware of this and asked the Charging Party for the names of the drivers. The exchange soon became heated and the Charging Party yelled at the Union President to get off his "dead ass" to make sure the rules were being followed. The Union President responded by calling the Charging Party a "troublemaker."

On January 12, 2003, the Charging Party attended another Union meeting. At the end of the meeting, the Union President handed him a letter which stated that because he did not qualify to be on the A-List, his name was being effectively removed. On January 17, 2003, the Charging Party filed an unfair labor practice charge in Case 16-CB-6348 alleging that the Union had removed him from the A-list in retaliation for his dissident intra-Union activities. The Region issued complaint and, on January 14, 2004,[3] the ALJ decided that the Union had

[3] All dates hereafter are in 2004, unless noted otherwise.

removed the Charging Party from the A-list for his protected Section 7 activities and ordered, inter alia, the Charging Party's reinstatement to the A-list and backpay.

On July 29, the Board adopted the ALJ's findings and order in the above case, and in compliance with the Board order, the Charging Party was reinstated to the A-list on September 1. On September 12, the Charging Party asked the Union President and the Union Dispatcher if there was any work available in the movie craft. Both responded that there were no productions at the time. The Charging Party then asked to see the out-of-work list. The Union President responded that he could not show him the list because it included personal employee information.

In mid-September, the Charging Party learned that two films (Production A and Production B, respectively) were being filmed in the Union's jurisdiction. From mid-September to mid-October, the Charging Party contacted and spoke with the Union Dispatcher on several occasions to inquire about work opportunities on the productions. Each time, the Union Dispatcher stated that he had not heard from the transportation coordinators on either production and did not otherwise have any information on any work opportunities on the productions.[4]

On October 12, the Charging Party called the Union Dispatcher and told him he had learned that noncraft members were working on Production A. The Union Dispatcher said he was aware of this because the transportation coordinator for Production A told the Union that the Employer wanted the same transportation crew he had employed in his past 5 productions.[5] The Charging Party argued that the Employer did not have the right to choose his drivers and that the Union needed to refer individuals as they appeared on the out-of-work list, and asked the Union Dispatcher what he intended to do about the situation. The Union Dispatcher responded that he needed

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[4] Production B was transferred to another local union's jurisdiction soon after filming began. The Employer thereafter retained most of its drivers from the other local union's hiring hall.

[5] The Employer for Production A has filmed 5 productions in area since 1998. The same transportation coordinator has worked on all 5 productions. The Employer generally employed the same eleven person transportation crew on these productions. Ten of the crew members have worked on all 5 previous productions. One crew member has worked on 3 previous productions. Three out of eleven are not members of the A-List.

to speak to the Union President and told the Charging Party he was trying to plan a meeting to discuss the matter but it was difficult to get everyone together. The Charging Party then told the Union Dispatcher that the Union needed to file a grievance and that he would sign it. The Union Dispatcher replied, "Well, I need to see who is first on the list because if someone is ahead of you, they may want to a file a grievance first." The Charging Party stated that he would sign the grievance if the Union Dispatcher could not get another person to sign it.

On October 17, the Charging Party spoke to the Union President regarding his concerns. The Union President told him he planned to hold a meeting on October 30 to discuss the hiring hall. The Charging Party asked the Union President if he was aware that noncraft members were working. The Union President acknowledged he was and that changes were going to be made at the October 30 meeting. The Charging Party replied that the Union needed to file a grievance immediately. The Union President insisted they wait until the October 30 meeting. The meeting was later postponed because some craft members were working in a neighboring state and were unavailable.

On October 25, the Charging Party filed a charge in Case 16-CB-6814, alleging that the Union violated Section 8(b)(1)(A) by refusing to: (1) permit the Union members to view the out-of-work list on July 29; and (2) refer the Charging Party for reasons that were invidious, arbitrary, and contrary to the Act. The Region found merit to and issued complaint on the first charge allegation. The hearing on the matter has been postponed indefinitely pending resolution of the instant charge. The Region dismissed the second allegation after its investigation revealed that the Union had referred the Charging Party to Productions A and B and the transportation coordinators had refused to hire him.

The Region's investigation of Case 16-CB-6814 revealed deviations from the Union's established referral rules and the Standard Area Agreement. Specifically, with regard to Production A, prior to the start of the production the Employer requested the Union's permission to directly contact and hire employees who had worked for the Employer in previous productions. The Employer agreed it would then contact the Union if it needed any additional drivers. The Union President agreed to this arrangement, and the transportation coordinator directly contacted and hired drivers from the previous crew. The investigation also revealed that upon the Employer's request for additional drivers, the Union faxed to the transportation coordinator for Production A a list of all out-of-work employees. The

transportation coordinator used this list to staff crews on both October 18 and 25, when the Employer needed additional drivers. The transportation coordinator did not hire the Charging Party on either of these dates, even though his name was on the list.

The Region also obtained Board affidavits from the transportation coordinators for Productions A and B in connection with its investigation of Case 16-CB-6814. The transportation coordinator for Production A testified that he had never worked with the Charging Party, but that according to his "reputation" he was not the type of driver "who could fit in with his crew" because "he is not a team guy, he just wants to run the show." He further testified that the Charging Party wants to be president of the Union and if he is not president, he wants to run the movie craft. He referred to an incident in which the Charging Party got into a physical altercation on a production with another driver in 1997. For these reasons, he decided not to hire the Charging Party. The transportation coordinator for Production B testified that the Charging Party feels like it is his job to dictate to the coordinators how the job should be run and that he is a "loose cannon." He also referenced the same incident involving the physical altercation in 1997 as a reason why he decided not to hire the Charging Party. Additionally, in the ALJ hearing in January 2004, a third transportation coordinator testified that the Charging Party, "[would] not be happy until he is president of the [Union]." He further testified that he regularly attends Union meetings and has witnessed the Charging Party several times criticizing the Union leadership and alleging that the Union is allowing the transportation coordinators to engage in unfair hiring practices.

On December 4, the Union held the special meeting that had been originally scheduled for October 30. The Union President led the meeting. The transportation coordinator for Production A was present, along with transportation coordinators from prior productions. During the meeting, the Union President stated that the Union was going to have to follow the hiring hall rules and refer individuals on a rotational basis. The transportation coordinator for Production A stated that he could hire whomever he wanted to. The Union President reiterated that the Union was going to follow the referral rules. The transportation coordinator then stated that he had spoken to an attorney who told him that he did not have to hire anyone that the Union referred to him.

At a meeting on January 8, 2005, the Charging Party asked the Union Dispatcher whether the Union had any

information regarding the transportation coordinators' refusal to hire him for Productions A or B, even though the Union had referred him. The Union Dispatcher stated he did not but that he could obtain such information. When the Charging Party later followed up, the Union Dispatcher told him that he did not have any information and to talk to the Union President if he wanted to discuss the matter further. On January 18, 2005, the Charging Party wrote a letter to the Union President and again requested information on why he was not hired. The Charging Party also alleged that the Union, by its inaction and allowing the Employers not to follow the referral procedures, was supporting the Employers' refusal to hire him because of his complaints regarding the operation of the hiring hall. In response, the Union President's letter dated February 24, 2005, stated, inter alia, that, "to his knowledge the only reason why [the Charging Party] was not called was that the [Employers] exercised their right under Article IV of the Standard Area Agreement."

ACTION

We conclude that complaint should issue, absent settlement, alleging that the Union violated Section 8(b)(1)(A) in connection with the operation of its hiring hall by: (1) failing to adhere to its established referral rules and the Standard Area Agreement; and (2) breaching its duty of fair representation by failing to investigate the Charging Party's complaints regarding the Employers' refusal to hire him.

I. The Union's Duty in Operating an Exclusive Hiring Hall

It is firmly established that where referral under an exclusive hiring hall is conditioned upon clear and unambiguous standards set forth in an agreement, "any departure from [those] procedures that results in a denial of employment to an applicant falls within that class of discrimination which inherently encourages union membership, breaches the duty of fair representation owed to all hiring hall users, and violates Section 8(b)(1)(A) and (2)."[6] A departure from established referral procedures

[6] Operating Engineers Local 406 (Ford, Bacon & Davis), 262 NLRB 50 (1982), enf. 701 F.2d 504 (5th Cir. 1983) (union violated Section 8(b)(1)(A) and (2) by departing from a referral rule without showing legitimate justification for the departure). See also Millwrights Local 2834 (Atlantic Maintenance), 268 NLRB 150, 157 (1983)(union adduced no evidence that its departure from the established hiring hall procedures was essential to its effective representation of employees); Journeymen Pipe Fitters, Local 392 (Kaiser

sends an "...unspoken message to all hiring hall users [] that, despite what the rules say, the union – which controls their access to employment – can do as it pleases in awarding referrals, and that union considerations may therefore very well affect the ability of individuals to obtain favorable consideration in referrals."[7] A union may rebut the presumption of unlawfulness if it shows that its action was taken pursuant to a lawful union security clause or was necessary to the effective performance of its representative function.[8] Unions have successfully demonstrated that a deviation from hiring hall procedures was necessary where, e.g., the employee's conduct harmed the union's reputation and relationship with employers to which it supplies labor;[9] or the employee's conduct interfered with the mechanics of the referral process.[10]

Applying these principles to the instant case, we conclude that the Union departed from its established referral rules and the Standard Area Agreement, thereby allowing an Employer to use its discretion in hiring employees without regard to their placement on the out-of-

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Engineers), 252 NLRB 417, 418 (1980), enf. denied 113 LRRM 3500 (6th Cir. 1983) (same); and Ironworkers, Local 433 (Associated General Contractors), 228 NLRB 1420, 1438-1439 (1977), enf. 600 F.2d 770 (9th Cir. 1979), cert. denied 445 U.S. 915 (1980)(same).

[7] Plumbers Local 342 (Contra Costa Electric), 329 NLRB 688, 691 (1999), enf. denied sub nom. Jacoby v. NLRB, 233 F.3d 611 (D.C. Cir. 2000), reaffd. 336 NLRB 549 (2001).

[8] Operating Engineers, Local 18 (Ohio Contractors Assn.), 204 NLRB 681, 681 (1973), enf. denied on other grounds and remanded per curiam 496 F.2d 1308 (6th Cir. 1974), reaffd. 220 NLRB 147 (1975), enf. denied 555 F.2d 552 (6th Cir. 1977).

[9] Stage Employees IATSE Local 150 (Mann Theatres), 268 NLRB 1292, 1295-96 (1984) (union lawfully refused to refer employee with history of misconduct and incompetence on various jobs to which he had been referred); Longshoremen ILA Local 341 (West Gulf Maritime Assn.), 254 NLRB 334, 337 (1981) (union lawfully refused to refer employee who had engaged in wildcat strike in violation of contractual no-strike clause).

[10] Boilermakers Local 40 (Envirotech Corp.), 266 NLRB 432, 433 (1983) (union lawfully denied employee referral after employee had circumvented hiring hall by applying for work directly from employer).

work list. We further conclude that the Union's purported reason for the departures, i.e. to placate the Employer who had requested to employ a crew with which it had repeatedly worked, without having to follow referral procedures in reaching that result, is insufficient to overcome the presumption of unlawfulness. Therefore, the Union's actions violated Section 8(b)(1)(A).

The Standard Area Agreement requires that the Employers "request referrals for all drivers" from the Union and Rule C of the Union's referral rules requires that employees be referred on a rotational basis. The Union departed from the requirements under both provisions when it agreed to permit the Employer for Production A to directly contact and hire employees. By allowing the Employer to directly contact employees, the Employer did not "request referrals" from the Union and the Union did not provide any referrals, let alone on a rotational basis. This arrangement bypassed the contractual and internal Union referral procedures entirely. The Union also deviated from Rule C when it faxed a list of employees to the transportation coordinator for Production A because the Union is required to refer individuals in the order they appear on the out-of-work list. By faxing a list of all names, the Union allowed the transportation coordinator to exercise his discretion in staffing the crews on both October 18 and 25, without regard to the employees' placement on the out-of-work list. Although the Union's faxing a list may have technically complied with the Standard Area Agreement's requirement generally to refer individuals, it did not comply with the Union's Rule C requiring referrals on a rotational basis. The Board has held that a deviation from hiring hall procedures is unlawful regardless of whether the departure is from a contract or the union's self-established rules.[11] Therefore, the Union's conduct in allowing an Employer to directly contact and hire employees and faxing a list of all out-of-work employees to the Employer was in contravention of the clear and unambiguous language of the Standard Area Agreement and its own referral rules and is presumptively unlawful.

We further conclude that the Union's purported reason for departing from the established referral procedures is insufficient to overcome the presumption of unlawfulness. The Union claims that its relationship with the Employer for Production A would be strained if it required the Employer to exercise its contractual right to reject each

[11] Plumbers Local 44 (Welded Construction), 313 NLRB 1, n.2 (1993), enf. 56 F.3d 72 (9th Cir. 1995).

properly referred employee until it had the crew it desired. The Union argues that this deviation was necessary to avoid jeopardizing future work opportunities for other union members by placating the Employer, and was therefore necessary for the effective representation of the unit as a whole.

Although the Union arguably had a nonfrivolous explanation for its actions, there is no evidence to support that its actions were necessary for the benefit of the unit as a whole.[12] Specifically, there is no evidence that imminent harm or even reasonably foreseeable harm would have resulted to the Union's relationship with the Employer if it required the Employer to follow the technical requirements of the referral procedures. Rather, the Union's purported reason appears to be driven by pragmatic considerations requested by the Employer, namely, to eliminate the unnecessary steps of making the Employer proceed with the referral and rejection process because the Employer could exercise its right to reject any applicant until arriving at its desired crew. This pragmatic reason, which the parties could have negotiated in the Standard Area Agreement governing referral procedures, does not suffice to show that the Union's actions were necessary absent any evidence that its relationship with the Employer was in jeopardy for any legitimate substantive reason, and therefore, for the reasons set forth above, does not rebut the presumption that the Union's deviations from the hiring hall procedures were unlawful.

The Union's reliance on these pragmatic considerations distinguishes this case from IATSE, Local 150 (Mann Theaters), above,[13] where the Board excused the union's deviation from its referral procedures. In Mann Theaters, the employers also had a contractual right to reject any applicant and the union had a contractual obligation to refer only "qualified" employees.[14] Some employers in Mann Theaters contacted the union and specifically requested

[12] See, e.g., Millwrights (Atlantic Maintenance), 268 NLRB at 157 (1983) (Board upheld ALJ's conclusion rejecting union's defense that it had a legitimate purpose when it failed to refer the charging party who the employer had requested by name because it did not want the employer to abuse its contractual power by continuously utilizing the specific name call provision to the detriment of other employees who appeared higher on the out-of-work list).

[13] 268 NLRB 1292.

[14] Id. at 1292 n.2, and 1295.

that it not refer the charging party due to his repeated incompetence on the job and gross misconduct.[15] In those circumstances, the Board found that further referral of the charging party would jeopardize its relationship with the employers. The instant case is distinguishable because there is no evidence that any Employer contacted the Union to specifically request that certain employees not be referred. Further, although the Union here is also contractually required to refer qualified applicants, the Union has never claimed that its departures from the referral rules were necessary to fulfill this contractual obligation.

II. Union's Duty of Fair Representation

A union, in the role as the exclusive representative of a bargaining unit, has the "statutory obligation to serve the interests of all members without hostility or discrimination toward any, to exercise its discretion with complete good faith and honesty, and to avoid arbitrary conduct."[16] Mere negligence, poor judgment, insensitivity or ineptitude, without more, does not constitute a breach of the union's duty of fair representation.[17] Rather, a breach of a union's duty of fair representation occurs "only when a union's conduct toward a member of the collective bargaining unit is arbitrary, discriminatory, or in bad faith."[18] A union's actions are arbitrary "...only if, in light of the factual and legal landscape at the time of the union's actions, the union's behavior is so far outside 'a wide range of reasonableness' ...as to be irrational."[19]

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[15] Id. at 1293-1294.

[16] Vaca v. Sipes, 386 U.S. 171, 177 (1967); Miranda Fuel Co., Inc., 140 NLRB 181, 185 (1962), enf. denied, 326 F.2d 172 (2d Cir. 1973). Although Miranda was reversed, the Supreme Court approved the doctrine in Vaca v. Sipes. See Laborers Local 300 (Memorial Park), 235 NLRB 334 (1978), enf. 613 F.2d 203 (9th Cir. 1980).

[17] Teamsters Local 692 (Great Western Unifreight System), 209 NLRB 446, 448 (1974).

[18] Vaca v. Sipes, 386 U.S. at 190.

[19] Plumbers Local 91 (Brock & Blevins), 336 NLRB 541, 543 (2001) quoting Airline Pilots Ass'n, International v. O'Neill, 111 S.Ct. 1127, 1130 (1991), rhrg. denied 939 F.2d

The standard governing the duty of fair representation applies with equal force to all union activity, including the processing of grievances. In each case, the Board examines the totality of the circumstances to determine whether the union's conduct was based upon arbitrary, irrelevant, discriminatory, or invidious considerations.[20] A union must initially investigate an employee's grievance before deciding not to process it.[21] Moreover, the union's investigation may not be conducted in a perfunctory manner. For instance, a failure to examine a grievant's version of events or evidence in support of the grievance may constitute unlawful perfunctory grievance handling.[22]

Applying these principles, we conclude that the Union breached its duty of fair representation in violation of Section 8(b)(1)(A) when it failed to investigate the Charging Party's complaints regarding the Employers' alleged refusal to hire him in light of Section 7 activity made known to the Union. The Charging Party requested, first on October 12 and again on October 17, that the Union

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1199 (5th Cir. 1991). See also In re Local Union No. 3 (White Plains), 331 NLRB 1498, 1505 (2000).

[20] Office Employees Local 2, 268 NLRB 1353, 1355-1356 (1984), affd. sub nom. Eichelberger v. NLRB, 765 F.2d 851 (9th Cir. 1985).

[21] Teamsters Local 559 (Mashkin Freight Lines, Inc.), 243 NLRB 848, 850 (1979), supplemented by 257 NLRB 24 (1981) affd. 714 F.2d 115 (2d Cir. 1982); Brown Transport Corp., 239 NLRB 711, 714 (1978); and Landry v. The Cooper/T. Smith Stevedoring Company, Inc., 880 F.2d. 846, 852 (5th Cir. 1989) (the duty of fair representation imposes an obligation for a union to investigate a grievance in good faith) citing Abeline Sheet Metal, Inc. v. NLRB, 619 F.2d 332, 347 (5th Cir. 1980).

[22] See Newport News Shipbuilding & Dry Dock, 236 NLRB 1470, 1471 (1978), enf. in part, denied in part, 631 F.2d 263 (1980)(union breached its duty of fair representation when it relied almost solely upon the employer's explanation with little additional investigation); Service Employees, Local 579 (Convacare of Decatur), 229 NLRB 692, 693 (1977) (union violated its duty of fair representation when it conducted little or no investigation into reasons for charging party's discharge); P & L Cedar Products, 224 NLRB 244, 260 (1976) (failure to discuss case with grievant and unquestioned acceptance of employer version was unlawful); United Steelworkers of America (Interroyal Corp.), 223 NLRB 1184, 1185 (1976).

file a grievance against the Employer for Production A for not adhering to the Union's referral rules. Specifically, the Charging Party learned that the Union referred him to Productions A and B, but the transportation coordinators had refused to hire him. The Charging Party complained to the Union about the transportation coordinators' decisions not to hire him, and claimed that they were motivated by his complaints regarding the operation of the hiring hall. However, even after the Charging Party brought to the Union's attention that the transportation coordinators' refusal to hire him may have been motivated by his Section 7 activity, the Union took no action but merely stated that the Employers were exercising their right to reject him under the Standard Area Agreement. The Union's perfunctory treatment in dismissing the Charging Party's complaints ignored that inherent in the Employers' contractual right to "reject any applicant" is the obligation to avoid doing so for an unlawful reason under the Act.

Despite the Employer's contractual right to reject an employee referred by the Union, the Union was required to at least investigate the Charging Party's claims that he was rejected in retaliation for engaging in protected Section 7 activity. In this regard, we note that the transportation coordinators, who are the Employers' agents and liaison with the Union's hiring hall, are also members of the Union. As a result, they, along with the Union leadership, were well aware of the Charging Party's longstanding complaints regarding the operation of the hiring hall. In fact, the reasons given by the transportation coordinators for not hiring the Charging Party include statements relating to the Charging Party's protected, dissident intraunion activities. For example, in explaining why he did not hire the Charging Party, the transportation coordinator for Production A admitted that he had never worked with the Charging Party but that he "wants to be president of the [Union] and if he is not president, he wants to run the movie craft." The transportation coordinator for Production B provided similar testimony, stating that the Charging Party feels like it is his job to dictate to the coordinators how the job should be run. Also, during the hearing in Case 16-CA-6348, another transportation coordinator testified that the Charging Party would not be happy until he is president of the Union and further, during his regular attendance of Union meetings, he has witnessed the Charging Party criticize the Union leadership and complain that the coordinators engage in unfair hiring practices.

In light of the transportation coordinators' acknowledgment that their respective decisions to not hire the Charging Party were largely based on his protected

intra-union activity, the Union's duty of fair representation required it to, at the very least, investigate the Charging Party's complaints that the Employers were refusing to hire him for unlawful reasons. However, there is no evidence or contention that the Union conducted any investigation into the Charging Party's allegations of discrimination. Instead, the Union relied on the Employers' right to reject clause as the sole explanation for the Charging Party's failure to receive work. By dismissing the Charging Party's complaint in this perfunctory manner, without any investigation, the Union breached its duty of fair representation in violation of Section 8(b)(1)(A).[23]

Accordingly, the Region should issue a Section 8(b)(1)(A) complaint, absent settlement.

B.J.K.

[23] Id.